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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,092	02/23/2005	Toshiaki Kimura	OGA-013	3275
20374 7590 10/23/2008 KUBOVCIK & KUBOVCIK SUITE 1105 1215 SOUTH CLARK STREET ARLINGTON, VA 22202				
EXAMINER TOSCANO, ALICIA				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
10/23/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/525,092

Applicant(s)

KIMURA ET AL.

Examiner

Alicia M. Toscano

Art Unit

1796

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Randy Gulakowski/
Supervisory Patent Examiner, Art Unit 1796

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive. Applicant argues the issue is whether one would have a reasonable expectation of success of forming the composition into a fiber having good properties. Applicant argues the office has not demonstrated that one of ordinary skill would reasonably expect melt spinning to be equivalent to tape yarn production. Applicant argues the two process result in fibers which have different properties. Applicant further argues the declaration shows unexpected results.

The Examiner disagrees. The references used all disclose making fibers out of a similar polylactic acid polymer, wherein the molecular weights disclosed to be used by each reference overlap. As such using the processes and teachings therein to teach the functional equivalence of melt spinning and yarn production is proper. As such it is the Examiner's position that one would have a reasonable expectation of success when substituting one for the other. That the resultant product has different properties is moot, since different processes would inherently result for such. The processes all functionalize equivalently in that a fiber is formed. Proper showing of motivation and obviousness has been put forth and the rejection stands.

A showing of unexpected results would overcome the rejection. Applicant's declaration is not persuasive. Applicant has shown 2 data points, one of the prior art with erucamide, and one of the invention, ethylenebis(stearamide). Two data points are not sufficient for the Examiner to properly ascertain whether the use of ethylenebis(stearamide) is unexpectedly different, or just different. The Examiner suggests 2-3 different non-inventive additives to show that the results with ethylenebis(stearamide) is unexpected in the art. Further, Applicant has only shown data for one inventive bisamide. The claims are drawn to a fatty acid bisamide or an alkyl-substituted fatty acid monoamide. Applicant can either (1) show unexpected results for the broadly claimed amides by submitting more data, or, (2) amend the claims to be commensurate in scope with the proposed unexpected results. Further regarding the data, the Examiner notes that the "properties of the raw yarn" of Table 1 only differ by a small amount, said difference does not seem to be significant since this small difference could result from experimental error. As such, the significance, i.e. error bars, of the data points should be disclosed. Additionally the "properties of the cloth" are disclosed in relative terms, there is no disclosure as to the scale of the "grade", is it from 0-4, or, 0-10, said differences give different weight to the data presented. Further, the "X", "triangle" and "circle" symbols do not allow for the significance between the data points to be determined.

As such Applicant's arguments are not persuasive and the rejection stands.